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effect of the appeal, he should bring the fact of the appeal before us by proper pleading and proof.

Upon the question whether the court can take cognisance of the New York law as to the effect of an appeal, unless pleaded and proved, see 2 Am. Lead. Cas. (5th ed.) 648 *et seq.*

Demurrer overruled.

Court of Appeals of Kentucky.

THOMAS H. WILLIAMS *v.* THE CITY OF NEWPORT.

A municipal corporation which has created a department in the municipal government may abolish it at any time unless restricted by some provision of its charter.

Where such a department is abolished the officers connected with it are rendered *functus officio*, and unless there has been a contract between them and the city for service for a time fixed, they have no right to any further compensation.

Such a contract is not implied by the mere election of an officer for a term named. In such case the officer is not bound to serve the full term nor does the corporation bind itself to keep the office in existence for him.

IN error from Campbell Circuit Court. Defendant, a municipal corporation, by resolution of its council created a fire department and plaintiff was appointed by the council as chief of the fire department for a term of two years. Before the expiration of that term the council abolished the department.

R. W. Nelson and John S. Ducker, for the plaintiff.

Wm. Boden, for defendant.

The opinion of the court was delivered by

PRYOR, J.—The city council having been empowered to organize and maintain a fire department, it necessarily followed that the power of selecting the officers to control that department belonged to that body, there being nothing in the city charter to prevent its exercise. They fixed the term of office of the chief of the fire department at two years, his salary to be at the rate of fifty dollars a month.

He was also *ex officio* one of the board, whose duty it was to make and enforce such rules as might be deemed necessary to operate this department of the city government.

There was no contract between the appellant and the city by which the services of the former had been secured to the city for any length of time. It was optional with appellant, after the acceptance of the office by him, to retain it or not, and, upon his resignation, no action by reason of the fact could have been maintained

against him by the city. It was an office created by the city legislature, pertaining to the fire department, for the safety of the property within its boundary, and when not proving beneficial the council had not only the power to abolish the offices connected with it, but the department itself. This seems to have been done, and the department has no longer an existence. The case of *Chase v. City of Lowell*, reported in 7 Gray, conduces to sustain the view taken of this question by counsel for appellant. In that case, however, it appears that the committee appointed for the purpose of selecting the city engineer *were authorized to contract with him for the ensuing year, or for such time as they may deem expedient*; and having entered into a contract for the services for a fixed time, it might well be argued that both parties were bound to perform its stipulations.

The appellant was an officer of the city by reason of his appointment, *subject to the right of the council to abolish his office*. It was necessary not only to appoint the *chief* of the department, but to employ many others to aid in its successful operation; and to require that the city should be compelled to pay these parties, or any one of them, who may have been appointed by the council to discharge certain duties, when the department itself had been abolished, would be to hold that the mere appointment was in the nature of a hiring from year to year, and the corporation compelled to maintain the department for the two years; or, if not, to pay the officers appointed to operate it their full salaries, whether any services were rendered or not. The services to be rendered in this case were not professional or private, but official and public. "Although an officer may be elected or appointed for a fixed period, yet where he is not bound and cannot be compelled to serve for the whole time, such election or appointment cannot be considered a contract to hire for a stipulated term :" Dillon on Corps., p. 204; *Iowa City v. Foster*, 10 Iowa 189; *Connor v. Mayor of New York*, 1 Seld. 285; *Hoboken v. Gear*, 3 Dutch. 26; *Wheatly v. City of Covington*, 11 Bush. 18.

The council in organizing the fire department created the office of *chief of the department*, fixed the term at two years, and appointed the appellant Williams. This was not a contest between the city and appellant, nor was it obligatory on the latter to serve the two years.

The court below having so decided, the judgment is affirmed.